

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA §
§
v. § CASE NO. 4:13cr244
§
BRIGGETTE ELLIS (2) §

**REPORT AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE JUDGE**

On May 28, 2015, the Court held a hearing on Defendant's Motion to Withdraw Guilty Plea (Dkt. 87), the matter having been referred to the undersigned by the Honorable Marcia A. Crone (*see* Dkt. 90). Having considered the record before it, the Court finds that the motion should be DENIED.

Defendant entered her plea of guilty before the undersigned on April 29, 2014, and the plea was adopted May 5, 2014. *See* Dkts. 43-50. Defendant's sentencing hearing was held on March 30, 2015, and the judgment was entered on April 1, 2015 finding Defendant guilty of misprision of a felony and committing Defendant to the custody of the U.S. Bureau of Prisons for a term of 8 months. *See* Dkts. 81 & 82.

On May 1, 2015, Defendant filed a motion to withdraw her guilty plea, arguing that her former counsel promised her that "by pleading guilty she would receive 5 years probation and no jail time period." Dkt 87 at 1-2. The Government has filed a response in opposition.

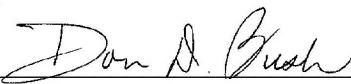
As stated at the hearing, Federal Rule of Criminal Procedure 11(e) provides that "[a]fter the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the

plea may be set aside only on direct appeal or collateral attack.” FED. R. CRIM. P. 11(e). Defendant filed her motion after the Court imposed her sentence. Under the plain language of the rule, she may not now withdraw her plea of guilty in this Court.

For this reason, the Court recommends that Defendant’s Motion to Withdraw Guilty Plea (Dkt. 87) be DENIED. Within fourteen (14) days after service of the magistrate judge’s report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C.A. § 636(b)(1)(c).

Failure to file written objections to the proposed findings and recommendations contained in this report within the time period set forth above shall bar an aggrieved party from *de novo* review by the district court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).

SIGNED this 1st day of June, 2015.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE